

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JAMAL M. AWAD

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:06cv870LG-RHW

ALBERTO GONZALEZ, ET AL.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Jamal Awad's objection to the Report and Recommendation of United States Magistrate Judge Robert H. Walker entered in this cause on September 5, 2006. After thoroughly reviewing the findings in the Report and Recommendation in addition to the positions of the Plaintiff advanced in his objection, the Court finds that the Report and Recommendation should be adopted as the finding of the Court for the reasons that follow.

PROCEEDINGS IN FORMA PAUPERIS

Title 28, United States Code, Section 1915(a) provides in part:

Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

"A grant of leave to proceed in forma pauperis is made by considering only a petitioner's economic status." *Cay v. Estelle*, 789 F.2d 318, 322 (5th Cir. 1986), *overruled in part by Booker v. Koonce*, 2 F.3d 114, 116 (5th Cir. 1993), *citing* 28 U.S.C. § 1915(a) and *Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976); *see also Eason v. Holt*, 73 F.3d 600, 602 (5th Cir. 1993). The district court has wide discretion in denying an application to proceed

IFP. However, in denying applications, a court must not act arbitrarily and it may not deny the application on erroneous grounds. *Hogan v. Midland County Comm.*'s 680 F.2d 1101, 1103 (5th Cir. 1982); *Flowers v. Turbine Support Division*, 507 F.2d 1242, 1244 (5th Cir. 1975).

In the application before the Court as well as the objections filed, Awad has failed to complete the requisite form or otherwise present evidence tending to show his inability to pay the costs of proceeding with this action. Based on the information before the Court, Awad's financial affidavit does not indicate that he is unable to pay costs of court. Therefore, the Court finds that the Report and Recommendation of Magistrate Judge Robert H. Walker entered on September 5, 2006, should be adopted as the finding of this Court.

IT IS THEREFORE ORDERED AND ADJUDGED that Awad's objection to the Report and Recommendation entered in this cause on September 18, 2006, [5-1] should be, and is hereby, **OVERRULED**.

IT IS FURTHER ORDERED AND ADJUDGED that the Report and Recommendation of Magistrate Judge Robert H. Walker entered on September 5, 2006, [5-1] should be and is hereby adopted as the finding of this Court.

SO ORDERED AND ADJUDGED this the 20th day of September, 2006.

St Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATE DISTRICT JUDGE